same shall in the judgment of the chief be for the good of the service, etc., the chief of police enjoys an absolute power of removal subject to approval of the director, notwithstanding the declaration that members of the department shall hold during good behavior and efficiency, so the chief of police need not as a condition of removal afford the officer proceeded against a formal trial, and the right to appear by counsel and offer evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 204.]

10. Municipal Corporations (§ 185 (4)*)—Chief of Police by Furnishing Charges Did Not Abrogate Power of Removal.—That the chief of police furnished policeman with statement of charges against him, and authorized policeman who was suspended to bring witnesses to testify in his behalf, was in no way an abrogation of the chief's absolute power of removal, and the policeman suspended was not entitled to appear by counsel and have a formal trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 204.]

Error to Hustings Court of Richmond.

Application by M. F. Lumpkin for writ of mandamus against C. A. Sherry, Chief of Police of the City of Richmond. Peremptory writ of mandamus was issued against respondent requiring him to permit relator, a policeman, at his trial on charges preferred to summon witnesses, etc., and respondent brings error. Reversed, and writ dismissed.

George Wayne Anderson and *H. R. Pollard,* both of Richmond, for plaintiff in error.

Nunnally & Miller, of Richmond, for defendant in error.

RECTOR et al. *v.* HANCOCK.

March 18, 1920.

[102 S. E. 663.]

1. Limitation of Actions (§ 27*)—Parol Agreement for Release of Notes Held Barred by Limitations.—Where the makers of notes secured by deed of trust on land agreed by parol that the holder should be allowed to go into possession, etc., and enjoy the rents and profits and that the makers would remain on the property in the employment of the beneficiary and perform services on the property without compensation except their board and keep, and that at the maturity of the notes the beneficiary should cancel the obligation and release the deed of trust, the makers' right of action, if the agreement be regarded as a transaction separate and distinct from the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

notes, which might be asserted by an independent suit or by counterclaim, is barred by the five-year period of limitations.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 406.]

2. Bills and Notes (§ 162*)—Negotiable Instrument Must Be Payable in Money.—Both under Code 1919, § 5746, and the law merchant, it is an attribute of a negotiable note that it be payable in money.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 406, 424.]

3. Evidence (§ 397 (2)*)—Parol Evidence to Add to Terms of Writing Inadmissible.—When parties deliberately put their engagements into writing in such terms as import a legal obligation without any uncertainty as to the objects or extent of such engagements, it is conclusively presumed that the whole engagement of the parties and the extent and manner of their undertaking was reduced to writing, and parol evidence is inadmissible to contradict or vary the terms of the written agreement.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 646.]

4. Evidence (§ 465*)—Contemporaneous Agreement That Notes Should Be Discharged Otherwise Than by Payment of Money Inadmissible.—As a negotiable note imports payment in money, parol evidence is inadmissible to show a contemporaneous agreement by the parties that the notes which were secured by deed of trust were to be satisfied by the makers' rendition of service for the holder, as well as the act of the makers in allowing the holder to go into possession and enjoy the rents and profits of the land mortgaged.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 646, et seq.]

5. Accord and Satisfaction (§ 19*)—Evidence (§ 466*)—Acceptance of Accord Necessary; Parol Evidence Admissible to Show Accord Discharging Notes.—Where the makers of notes secured by deed of trust agreed to place the holder in possession of the lands mortgaged, the holder agreeing that, in consideration of the rents and profits and the makers' services, he would release the lands at maturity of the obligation, etc., there would be an accord and satisfaction if the holder accepted the possession of the property and rendition of services in satisfaction of the notes, in which case, if the holder afterwards refused to release the deed of trust, parol evidence would be admissible to establish the accord and satisfaction.

[Ed. Note.—For ohter cases, see 10 Va.-W. Va. Enc .Dig. 689.]

6. Limitation of Actions (§ 40 (1)*)—Where Contract Is Accord and Satisfaction, Limitations Independent of Principal Transaction Will Not Run.—Where a contract whereby holder of notes and deed of trust was to accept profits of lands mortgaged, etc., until maturity of the obligation, and at that time to release the notes, etc., was executed so as to become an accord and satisfaction, limitations, inde-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

pendent of the principal transactions, will not run against the right of the makers to compel release.

Accord and Satisfaction (§ 1*)—Implies Pre-Existing Debt or Dispute.—An accord and satisfaction implies a pre-existing debt or dispute, so a parol agreement as to discharge, made contemporaneously with the execution of notes, cannot be treated as an accord and satisfaction of the notes.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 80.]

8. Accord and Satisfaction (§ 19*)—Bill Held Insufficient to Show Accord and Satisfaction of Notes.—A bill by makers of notes and deed of trust, who asserted that the parties had contemporaneously agreed that the holder should be allowed to enter into possession of lands and enjoy the rents and profits, etc., until maturity of the obligation, which would then be discharged, but that the holder, although he entered into possession of the lands, refused to carry out the agreement, is insufficient to make out an accord and satisfaction, not showing any actual acceptance of the parol contract by the holder.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 63, et seq.]

9. Accord and Satisfaction (§ 19*)—Must Be Actual Acceptance and Not a Mere Agreement to Accept.—In order to constitute a valid accord and satisfaction, whether the substituted contract be executory or executed, there must be an actual acceptance, and not a mere agreement to accept.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 63, et seq.]

10. Accord and Satisfaction (§ 19*)—Where Contract Accepted in Satisfaction, Original Demand Satisfied.—An executory contract, oral or written, may be accepted in satisfaction of a pre-existing demand or controversy; and, when so accepted, the original demand or controversy is wiped out and satisfied, although a new cause of action may arise by reason of the transaction.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 63, et seq.]

Appeal from Circuit Court, Henrico County.

Bill by George N. and Mary D. Rector against N. J. Hancock. From a decree dismissing the same, complainants appeal. Affirmed.

Scott & Buchanan and *Jno. L. Ingram,* all of Richmond, for appellants.

Smith & Gordon, of Richmond, for appellee.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.